UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/1999/383
6 April 1999

ORIGINAL: ENGLISH

LETTER DATED 16 MARCH 1999 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Once again, I have the duty to report to the Security Council the continuing refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the International Tribunal, as required by numerous resolutions of the Security Council and the Tribunal's Statute. The reason for making this report are the continuing and additional instances in which the Federal Republic has refused to permit the Prosecutor and her investigators to enter Kosovo, in order to initiate investigations into alleged crimes committed in that territory.

On 2 February 1999, I received a "Request by the Prosecutor, pursuant to rule 7 bis (B), that the President Notify the Security Council that the Federal Republic of Yugoslavia has Failed to Comply with its Obligations under Article 29" (hereinafter "the Prosecutor's Request") and supporting documents. On 12 February 1999, I invited the Federal Republic of Yugoslavia to respond, no later than 26 February 1999, to the Prosecutor's assertions. I have received no such response.

The Prosecutor's Request relates, inter alia, to the failure of the Federal Republic of Yugoslavia to allow the Prosecutor and a team of her investigators to enter Kosovo on 18 January 1999, in order to initiate an investigation into alleged criminal activity occurring in Racak, Kosovo. The Prosecutor relied, in part, on Security Council resolution 1160 (1998), in which the Council urged the Prosecutor to "begin gathering information related to the violence in Kosovo that may fall within its jurisdiction". This refusal is in direct contravention of the Federal Republic of Yugoslavia's obligations under resolution 1160 (1998), in which the Council notes "that the authorities of the Federal Republic of Yugoslavia have an obligation to cooperate with the Tribunal" and international law generally.

The International Tribunal's Rules of Procedure and Evidence provide, under rule 7 bis (B), that when the Prosecutor satisfies the President of the International Tribunal that a State has failed to comply with its obligations

under the International Tribunal's Statute, "the President shall notify the Security Council thereof". I have made a finding, pursuant to rule 7 bis (B), that the Federal Republic of Yugoslavia has failed to meet its obligations under article 29 of the Statute of the Tribunal.

I would also note that in Security Council resolution 1207 (1998) of 17 November 1998 the Council reiterated its call for the Federal Republic of Yugoslavia to cooperate fully with the Prosecutor in the investigation of all possible violations within the jurisdiction of the Tribunal. In resolution 1207 (1998), the Council requested that I keep it informed "about the implementation of this resolution for the Council's further consideration".

The Security Council created the Tribunal to investigate and prosecute persons responsible for some of the most horrific violations of international humanitarian law. As a subsidiary organ of the Security Council, and because the Tribunal lacks mechanisms to enforce State compliance, we rely upon the Security Council to bring non-cooperating States into compliance. Once again, I urge you to provide the support necessary to enable the Tribunal to discharge its mandate and to take measures that are sufficiently compelling to bring the Federal Republic of Yugoslavia into compliance with its obligations under international law.

(Signed) Gabrielle KIRK McDONALD
President